

Representative Wayne A. Harper proposes the following substitute bill:

**TOURISM, RECREATION, CULTURAL,
CONVENTION, AND AIRPORT FACILITIES**

TAX AMENDMENTS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Craig A. Frank

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends the Tourism, Recreation, Cultural, Convention, and Airport Facilities Tax Act to address a tax on food sold by restaurants and related provisions.

Highlighted Provisions:

This bill:

- defines terms;
- enacts the Utah Food and Restaurant Promotion Fund, including:
 - addressing funding for the fund; and
 - requiring the commissioner of agriculture and food to expend monies deposited into the fund for certain purposes related to tourism promotion;
- for a one-year period, requires the State Tax Commission to deposit certain revenues collected from a tax on food sold by restaurants into the Utah Food and Restaurant Promotion Fund;
- limits the authority of a county legislative body to take certain actions relating to a bond, note, or other evidence of indebtedness;
- requires a county legislative body to repeal a tax on food sold by restaurants under



certain circumstances after providing notice to the State Tax Commission; and
 ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

17-31-5.5, as last amended by Laws of Utah 2008, Chapter 286

59-12-602, as last amended by Laws of Utah 2008, Chapter 286

59-12-603, as last amended by Laws of Utah 2008, Chapters 286 and 384

ENACTS:

4-40-101, Utah Code Annotated 1953

4-40-102, Utah Code Annotated 1953

4-40-103, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **4-40-101** is enacted to read:

CHAPTER 40. UTAH FOOD AND RESTAURANT PROMOTION FUND ACT**4-40-101. Title.**

This chapter is known as the "Utah Food and Restaurant Promotion Fund Act."

Section 2. Section **4-40-102** is enacted to read:

4-40-102. Definitions.

As used in this chapter, "fund" means the Utah Food and Restaurant Promotion Fund.

Section 3. Section **4-40-103** is enacted to read:

4-40-103. Utah Food and Restaurant Promotion Fund -- Source of monies --**Interest -- Expenditure of monies.**

(1) There is created a restricted special revenue fund known as the Utah Food and Restaurant Promotion Fund.

(2) The fund shall be funded by the portion of the sales and use tax described in Subsection 59-12-603(2)(b).

57 (3) (a) The fund shall earn interest.

58 (b) Any interest earned on fund monies shall be deposited into the fund.

59 (4) (a) The commissioner shall expend the monies deposited into the fund as provided
60 in this Subsection (4).

61 (b) The commissioner shall expend 78% of the monies deposited into the fund for
62 tourism promotion by promoting increased patronage of restaurants in the state by:

63 (i) persons who reside within the state; and

64 (ii) persons who reside outside the state.

65 (c) The commissioner shall expend 22% of the monies deposited into the fund for
66 tourism promotion by promoting the use of the following by restaurants in the state:

67 (i) products grown in a variety of Utah counties; or

68 (ii) products produced in a variety of Utah counties.

69 Section 4. Section **17-31-5.5** is amended to read:

70 **17-31-5.5. Independent audit -- Report to county legislative body -- Content.**

71 (1) The legislative body of each county imposing the transient room tax provided for in
72 Section 59-12-301 shall annually engage an independent auditor to perform an audit to verify
73 that transient room tax funds are used only as authorized by this chapter and to report the
74 findings of the audit to the county legislative body.

75 (2) Subsection (1) applies to the tourism, recreation, cultural, convention, and airport
76 facilities tax provided for in Section 59-12-603, except that the audit verification required
77 under this Subsection (2) shall be for the uses authorized under Section 59-12-603.

78 (3) The report required under Subsection (1) shall include a breakdown of expenditures
79 into the following categories:

80 (a) for the transient room tax, identification of expenditures for:

81 (i) establishing and promoting:

82 (A) recreation;

83 (B) tourism;

84 (C) film production; and

85 (D) conventions;

86 (ii) acquiring, leasing, constructing, furnishing, or operating:

87 (A) convention meeting rooms;

- (B) exhibit halls;
- (C) visitor information centers;
- (D) museums; and
- (E) related facilities;
- (iii) acquiring or leasing land required for or related to the purposes listed in Subsection (3)(a)(ii);
- (iv) mitigation costs as identified in Subsection 17-31-2(1)(d); and
- (v) making the annual payment of principal, interest, premiums, and necessary reserves for any or the aggregate of bonds issued to pay for costs referred to in Subsections 17-31-2(2)(c) and (3)(a); and
- (b) for the tourism, recreation, cultural, convention, and airport facilities tax, identification of expenditures for:
 - (i) financing tourism promotion~~[, which means an activity to develop, encourage, solicit, or market tourism that attracts transient guests to the county, including planning, product development, and advertising]~~ as defined in Section 59-12-602;
 - (ii) the development, operation, and maintenance of the following facilities as defined in Section 59-12-602:
 - (A) an airport facility;
 - (B) a convention facility;
 - (C) a cultural facility;
 - (D) a recreation facility; and
 - (E) a tourist facility; and
 - (iii) a pledge as security for evidences of indebtedness under Subsection 59-12-603(3).
- (4) A county legislative body shall provide a copy of a report it receives under this section to:
 - (a) the Governor's Office of Economic Development;
 - (b) its tourism tax advisory board; and
 - (c) the Office of the Legislative Fiscal Analyst.

Section 5. Section **59-12-602** is amended to read:

59-12-602. Definitions.

As used in this part:

(1) (a) Subject to Subsection (1)(b), "airport facility" means an airport of regional significance, as defined by the Transportation Commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(b) "Airport facility" includes:

(i) an appurtenance to an airport, including a fixed guideway as defined in Section 59-12-1702 that provides transportation service to or from the airport;

(ii) a control tower, including a radar system;

(iii) a public area of an airport; or

(iv) a terminal facility.

(2) "Convention facility" means any publicly owned or operated convention center, sports arena, or other facility at which conventions, conferences, and other gatherings are held and whose primary business or function is to host such conventions, conferences, and other gatherings.

(3) "Cultural facility" means any publicly owned or operated museum, theater, art center, music hall, or other cultural or arts facility.

(4) "Recreation facility" or "tourist facility" means any publicly owned or operated park, campground, marina, dock, golf course, water park, historic park, monument, planetarium, zoo, bicycle trails, and other recreation or tourism-related facility.

(5) (a) "Restaurant" includes any coffee shop, cafeteria, luncheonette, soda fountain, or fast-food service where food is prepared for immediate consumption.

(b) "Restaurant" does not include:

(i) any retail establishment whose primary business or function is the sale of fuel or food items for off-premise, but not immediate, consumption; and

(ii) a theater that sells food items, but not a dinner theater.

(6) (a) "Tourism promotion" means to develop, market, promote, or solicit tourism.

(b) "Tourism promotion" includes:

(i) advertising;

(ii) planning;

(iii) product development; or

(iv) tourism promotion as described in Subsection 59-12-603(2)(b)(ii) or (2)(c).

Section 6. Section **59-12-603** is amended to read:

59-12-603. County tax -- Bases -- Rates -- Use of revenues -- Adoption of ordinance required -- Advisory board -- Administration -- Collection -- Distribution -- Enactment or repeal of tax or tax rate change -- Effective date -- Notice requirements.

(1) (a) In addition to any other taxes, a county legislative body may, as provided in this part, impose a tax as follows:

(i) (A) a county legislative body of any county may impose a tax of not to exceed 3% on all short-term leases and rentals of motor vehicles not exceeding 30 days, except for leases and rentals of motor vehicles made for the purpose of temporarily replacing a person's motor vehicle that is being repaired pursuant to a repair or an insurance agreement; and

(B) beginning on or after January 1, 1999, a county legislative body of any county imposing a tax under Subsection (1)(a)(i)(A) may, in addition to imposing the tax under Subsection (1)(a)(i)(A), impose a tax of not to exceed 4% on all short-term leases and rentals of motor vehicles not exceeding 30 days, except for leases and rentals of motor vehicles made for the purpose of temporarily replacing a person's motor vehicle that is being repaired pursuant to a repair or an insurance agreement;

(ii) subject to Subsection (3), a county legislative body of any county may impose a tax of not to exceed 1% of all sales of the following that are sold by a restaurant:

(A) prepared food; or

(B) food and food ingredients; and

(iii) a county legislative body of a county of the first class may impose a tax of not to exceed .5% on charges for the accommodations and services described in Subsection 59-12-103(1)(i).

(b) A tax imposed under Subsection (1)(a) is subject to the audit provisions of Section 17-31-5.5.

(2) (a) Subject to ~~[Subsection (2)(b)]~~ Subsections (2)(b) and (c), revenue from the imposition of the taxes provided for in Subsections (1)(a)(i) through (iii) may be used for:

(i) financing tourism promotion; and

(ii) the development, operation, and maintenance of:

(A) an airport facility;

(B) a convention facility;

(C) a cultural facility;

(D) a recreation facility; or

(E) a tourist facility.

(b) (i) For fiscal year 2009-10 only, the commission shall deposit 3.44% of the revenues collected from a tax authorized by Subsection (1)(a)(ii) within the boundaries of a county that imposes a tax authorized by Subsection (1)(a)(ii) into the Utah Food and Restaurant Promotion Fund created in Section 4-40-103.

(ii) The commissioner of agriculture and food shall expend monies deposited into the Utah Food and Restaurant Promotion Fund in accordance with Subsection (2)(b)(i) for tourism promotion as provided in Section 4-40-103.

~~[(b)]~~ (c) A county of the first class shall expend at least \$450,000 each year of the revenues from the imposition of a tax authorized by Subsection (1)(a)(iii) within the county to fund a marketing and ticketing system designed ~~[to]~~:

(i) ~~[promote]~~ for tourism promotion in ski areas within the county by persons that do not reside within the state; and

(ii) to combine the sale of:

(A) ski lift tickets; and

(B) accommodations and services described in Subsection 59-12-103(1)(i).

(3) (a) [A] Subject to Subsection (3)(b) or (c), a tax imposed under this part may be pledged as security for bonds, notes, or other evidences of indebtedness incurred by a county, city, or town under Title 11, Chapter 14, Local Government Bonding Act, or a community development and renewal agency under Title 17C, Chapter 1, Part 5, Agency Bonds, to finance:

~~[(a)]~~ (i) an airport facility;

~~[(b)]~~ (ii) a convention facility;

~~[(c)]~~ (iii) a cultural facility;

~~[(d)]~~ (iv) a recreation facility; or

~~[(e)]~~ (v) a tourist facility.

(b) A county legislative body may not:

(i) pledge revenues collected from a tax under Subsection (1)(a)(ii) as security for a bond, note, or other evidence of indebtedness if that bond, note, or other evidence of indebtedness is issued on or after July 1, 2009; or

212 (ii) on or after July 1, 2009, do any of the following with respect to a bond, note, or
213 other evidence of indebtedness issued before July 1, 2009:

214 (A) increase the face value of the bond, note, or other evidence of indebtedness; or

215 (B) increase the term for repayment of the bond, note, or other evidence of
216 indebtedness.

217 (c) If, on or after July 1, 2010, a county legislative body that imposes a tax under
218 Subsection (1)(a)(ii) retires a bond, note, or other evidence of indebtedness described in
219 Subsection (3)(a) for which the tax under Subsection (1)(a)(ii) is pledged as security, the
220 county legislative body shall:

221 (i) notify the commission in accordance with Subsection (9) that the county legislative
222 body will repeal the tax beginning on the first day of the first calendar quarter after a 90-day
223 period beginning on the date the commission receives the notice from the county legislative
224 body; and

225 (ii) subject to Subsection (9), repeal the tax beginning on the first day of the first
226 calendar quarter after a 90-day period beginning on the date the commission receives the notice
227 from the county legislative body under Subsection (3)(c)(i).

228 (4) (a) In order to impose the tax under Subsection (1), each county legislative body
229 shall adopt an ordinance imposing the tax.

230 (b) The ordinance under Subsection (4)(a) shall include provisions substantially the
231 same as those contained in Part 1, Tax Collection, except that the tax shall be imposed only on
232 those items and sales described in Subsection (1).

233 (c) The name of the county as the taxing agency shall be substituted for that of the state
234 where necessary, and an additional license is not required if one has been or is issued under
235 Section 59-12-106.

236 (5) In order to maintain in effect its tax ordinance adopted under this part, each county
237 legislative body shall, within 30 days of any amendment of any applicable provisions of Part 1,
238 Tax Collection, adopt amendments to its tax ordinance to conform with the applicable
239 amendments to Part 1, Tax Collection.

240 (6) (a) Regardless of whether a county of the first class creates a tourism tax advisory
241 board in accordance with Section 17-31-8, the county legislative body of the county of the first
242 class shall create a tax advisory board in accordance with this Subsection (6).

(b) The tax advisory board shall be composed of nine members appointed as follows:

(i) four members shall be appointed by the county legislative body of the county of the first class as follows:

(A) one member shall be a resident of the unincorporated area of the county;

(B) two members shall be residents of the incorporated area of the county; and

(C) one member shall be a resident of the unincorporated or incorporated area of the county; and

(ii) subject to Subsections (6)(c) and (d), five members shall be mayors of cities or towns within the county of the first class appointed by an organization representing all mayors of cities and towns within the county of the first class.

(c) Five members of the tax advisory board constitute a quorum.

(d) The county legislative body of the county of the first class shall determine:

(i) terms of the members of the tax advisory board;

(ii) procedures and requirements for removing a member of the tax advisory board;

(iii) voting requirements, except that action of the tax advisory board shall be by at least a majority vote of a quorum of the tax advisory board;

(iv) chairs or other officers of the tax advisory board;

(v) how meetings are to be called and the frequency of meetings; and

(vi) the compensation, if any, of members of the tax advisory board.

(e) The tax advisory board under this Subsection (6) shall advise the county legislative body of the county of the first class on the expenditure of revenues collected within the county of the first class from the taxes described in Subsection (1)(a).

(7) (a) (i) Except as provided in Subsection (7)(a)(ii), a tax authorized under this part shall be administered, collected, and enforced in accordance with:

(A) the same procedures used to administer, collect, and enforce the tax under:

(I) Part 1, Tax Collection; or

(II) Part 2, Local Sales and Use Tax Act; and

(B) Chapter 1, General Taxation Policies.

(ii) A tax under this part is not subject to Section 59-12-107.1 or 59-12-123 or Subsections 59-12-205(2) through (6).

(b) Except as provided in Subsection (7)(c):

(i) for a tax under this part other than the tax under Subsection (1)(a)(i)(B), the commission shall distribute the revenues to the county imposing the tax; and

(ii) for a tax under Subsection (1)(a)(i)(B), the commission shall distribute the revenues according to the distribution formula provided in Subsection (8).

(c) The commission shall deduct from the distributions under Subsection (7)(b) an administrative charge for collecting the tax as provided in Section 59-12-206.

(8) The commission shall distribute the revenues generated by the tax under Subsection (1)(a)(i)(B) to each county collecting a tax under Subsection (1)(a)(i)(B) according to the following formula:

(a) the commission shall distribute 70% of the revenues based on the percentages generated by dividing the revenues collected by each county under Subsection (1)(a)(i)(B) by the total revenues collected by all counties under Subsection (1)(a)(i)(B); and

(b) the commission shall distribute 30% of the revenues based on the percentages generated by dividing the population of each county collecting a tax under Subsection (1)(a)(i)(B) by the total population of all counties collecting a tax under Subsection (1)(a)(i)(B).

(9) (a) For purposes of this Subsection (9):

(i) "Annexation" means an annexation to a county under Title 17, Chapter 2, Annexation to County.

(ii) "Annexing area" means an area that is annexed into a county.

(b) (i) Except as provided in Subsection (9)(c), if, on or after July 1, 2004, a county enacts or repeals a tax or changes the rate of a tax under this part, the enactment, repeal, or change shall take effect:

(A) on the first day of a calendar quarter; and

(B) after a 90-day period beginning on the date the commission receives notice meeting the requirements of Subsection (9)(b)(ii) from the county.

(ii) The notice described in Subsection (9)(b)(i)(B) shall state:

(A) that the county will enact or repeal a tax or change the rate of a tax under this part;

(B) the statutory authority for the tax described in Subsection (9)(b)(ii)(A);

(C) the effective date of the tax described in Subsection (9)(b)(ii)(A); and

(D) if the county enacts the tax or changes the rate of the tax described in Subsection (9)(b)(ii)(A), the rate of the tax.

(c) (i) The enactment of a tax or a tax rate increase shall take effect on the first day of the first billing period:

(A) that begins after the effective date of the enactment of the tax or the tax rate increase; and

(B) if the billing period for the transaction begins before the effective date of the enactment of the tax or the tax rate increase imposed under Subsection (1).

(ii) The repeal of a tax or a tax rate decrease shall take effect on the first day of the last billing period:

(A) that began before the effective date of the repeal of the tax or the tax rate decrease; and

(B) if the billing period for the transaction begins before the effective date of the repeal of the tax or the tax rate decrease imposed under Subsection (1).

(d) (i) Except as provided in Subsection (9)(e), if, for an annexation that occurs on or after July 1, 2004, the annexation will result in the enactment, repeal, or change in the rate of a tax under this part for an annexing area, the enactment, repeal, or change shall take effect:

(A) on the first day of a calendar quarter; and

(B) after a 90-day period beginning on the date the commission receives notice meeting the requirements of Subsection (9)(d)(ii) from the county that annexes the annexing area.

(ii) The notice described in Subsection (9)(d)(i)(B) shall state:

(A) that the annexation described in Subsection (9)(d)(i) will result in an enactment, repeal, or change in the rate of a tax under this part for the annexing area;

(B) the statutory authority for the tax described in Subsection (9)(d)(ii)(A);

(C) the effective date of the tax described in Subsection (9)(d)(ii)(A); and

(D) if the county enacts the tax or changes the rate of the tax described in Subsection (9)(d)(ii)(A), the rate of the tax.

(e) (i) The enactment of a tax or a tax rate increase shall take effect on the first day of the first billing period:

(A) that begins after the effective date of the enactment of the tax or the tax rate increase; and

(B) if the billing period for the transaction begins before the effective date of the enactment of the tax or the tax rate increase imposed under Subsection (1).

336 (ii) The repeal of a tax or a tax rate decrease shall take effect on the first day of the last
337 billing period:

338 (A) that began before the effective date of the repeal of the tax or the tax rate decrease;

339 and

340 (B) if the billing period for the transaction begins before the effective date of the repeal
341 of the tax or the tax rate decrease imposed under Subsection (1).